

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MABLE RIVERA and ANTHONY RIVERA, individually
and as next friends of E.S. and B.C., infants; and
J.C., an infant, by her next friend ANDREA ZELLAN,

Plaintiffs,

06 Civ. 7077 (TPG)

-against-

AMENDED COMPLAINT

JOHN MATTINGLY, individually and as Commissioner,
MINA SHAH, individually and as review officer,
MICHAEL WARREN, individually and as caseworker,
CAROLYN WILLIAMS, individually and as supervisor;
DIANA CORTEZ, individually and as manager;
CITY OF NEW YORK, ANNY GARCIA, individually
and as caseworker, FABIAN NJOKU, individually
and as caseworker; ANDREA CUMMINGS, individually
and as supervisor; REHEMA BUKENYA, individually and
as associate vice president; FAMILY SUPPORT SYSTEMS
UNLIMITED, INC., and JOHN JOHNSON, individually
and as Commissioner,

PLAINTIFFS DEMAND
TRIAL BY JURY

Defendants.



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Plaintiffs, appearing by their attorneys, Lansner & Kubitschek, hereby allege
against defendants as follows:

I. PRELIMINARY STATEMENT

1. This is a civil rights action, pursuant to 42 U.S.C. §1983, in which
plaintiffs seek damages to redress the deprivation, under color of state law, of rights secured to
them under the Fourth and Fourteenth Amendments of the United States Constitution. Plaintiffs
also seek damages for the deprivation of their rights under New York law. Finally plaintiffs seek
declaratory and injunctive relief. The action arose from defendants' illegal seizure and detention
of infant plaintiffs from plaintiffs without probable cause or due process of law, and defendants'
policy and practice of violating constitutional rights in removing children from close blood

relatives who are serving as foster parents to the children by, among other things, promulgating unconstitutional regulations which, as applied to foster parents who are relatives (hereinafter "kinship foster parents"), fail to provide said relatives and children with due process prior or subsequent to removing the children from the relatives, for reasons other than reunifying the children with their parents or the existence of true emergencies.

II. JURISDICTION AND VENUE

2. Jurisdiction is conferred upon this Court by 28 U.S.C. §1343, which provides for original jurisdiction over all actions brought pursuant to 42 U.S.C. §1983, and by 28 U.S.C. §1331, which provides jurisdiction over all cases brought pursuant to the Constitution and laws of the United States. The Court has supplemental jurisdiction over certain defendants and over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper under 28 U.S.C. § 1391(b).

III. PARTIES

4. Adult plaintiffs Mable and Anthony Rivera reside in the State of New York, County of Queens. They have been married for over 30 years.

5. From December 1999 to March 31, 2006, and December 21, 2006, to February 15, 2007, adult plaintiffs were the kinship foster parents of their grand nieces, infant plaintiffs E.S., born January 10, 1998, and B.C., born February 27, 1999, who are sisters.

6. From December 1998 to March 31, 2006, and December 12, 2006, to June 25, 2007, adult plaintiffs were kinship foster parents of their grand niece, infant plaintiff J.C., born September 19, 1997, who is first cousin to E.S. and B.C.

7. On June 25, 2007, adult plaintiffs adopted J.C. and are now her legal parents.

8. Upon information and belief, between December 1998 and June 25, 2007, ACS, pursuant to a contract, entrusted defendant Family Support Systems Unlimited, Inc. ("the Agency"), a foster care agency, with the care of J.C.

9. Upon information and belief, between December 1999 and December 12, 2007, ACS, pursuant to a contract, entrusted defendant Family Support Systems Unlimited, Inc. ("the Agency"), a foster care agency, with the care of E.S. and B.C.

10. Defendant Family Support Systems Unlimited, Inc., is a not-for-profit corporation organized under the laws of the State of New York and is an "authorized agency" as defined in New York Social Services Law §371.

11. Defendant Family Support Systems Unlimited, Inc. is in the business of providing foster care, under contract with defendant City of New York, to children who have been removed from their homes and placed in the care of the Commissioner of ACS.

12. Upon information and belief, defendant Anny Garcia is a caseworker employed by defendant Family Support Systems Unlimited, Inc.

13. Upon information and belief, defendant Fabian Njoku is a caseworker employed by defendant Family Support Systems Unlimited, Inc.

14. Upon information and belief, defendant Family Support Systems Unlimited, Inc. assigned defendants Garcia and Njoku to supervise the foster care placement of infant plaintiffs.

15. Upon information and belief, defendant Andrea Cummings is a supervisor employed by defendant Family Support Systems Unlimited, Inc.

16. Upon information and belief, defendant Family Support Systems Unlimited, Inc. assigned defendant Cummings to supervise defendants Garcia.

17. Upon information and belief, defendant Rehema Bukenya is an associate vice president of defendant Family Support Systems, Unlimited, Inc.

18. Upon information and belief, defendant Family Support Systems Unlimited, Inc. assigned defendant Bukenya to supervise defendants Cummings, Garcia, and Njoku.

19. Defendant City of New York ("City") is a municipal corporation, incorporated pursuant to the laws of the State of New York.

20. Defendant City's Administration for Children's Services ("ACS") is authorized by New York law to investigate reports of child abuse and neglect and to care for children in foster care, who are in the legal custody of the Commissioner of ACS.

21. Defendant John Mattingly is Commissioner of ACS.

22. As Commissioner of ACS, defendant Mattingly is responsible for making and/or approving policies for ACS, including the investigation of alleged child abuse or maltreatment, the emergency removal of children from their families and relatives, the supervision of children in foster care, and the training and supervision of ACS employees.

23. As Commissioner of ACS, defendant Mattingly is responsible for ACS's compliance with the Constitution, statutes, regulations, and common law of the United States and the State of New York.

24. Upon information and belief, defendant Michael Warren is a caseworker employed by ACS and was assigned by defendant Mattingly to monitor the foster care placement of infant plaintiffs.

25. Upon information and belief, defendant Ruth Thomas is a caseworker employed by ACS and was assigned by defendant Mattingly to monitor the foster care placement

of infant plaintiffs.

26. Upon information and belief, defendant Carolyn Williams is a supervisor employed by ACS, who was assigned to supervise defendants Warren and Thomas.

27. Upon information and belief, defendant Diana Cortez is employed by defendant Mattingly as a manager for ACS.

28. Upon information and belief, defendant Cortez was assigned to supervise defendant Williams.

29. Defendant Mina Shah is an Independent Review Officer employed by ACS, who was assigned by defendant Mattingly to conduct a review of the removal of infant plaintiffs from plaintiffs' care on April 18, 2006.

30. Defendant John Johnson is the Commissioner of the Office of Children and Family Services of the State of New York (OCFS). As Commissioner, defendant Johnson is responsible for the administration, regulation, and supervision of the foster care system in the State of New York. Defendant Johnson is also responsible for providing training to employees of the local child welfare agencies with regard to the foster care of children.

IV. FACTS

31. Infant plaintiff J.C. entered foster care in December 1998, because her mother, who is plaintiff's niece, was unable to care for J.C.. J.C. was initially placed for two weeks in the foster home of a stranger. ACS then asked plaintiffs if they would take J.C. in, and plaintiffs gladly agreed.

32. At the time ACS asked plaintiffs to care for J.C., plaintiffs already knew J.C. very well, having regularly spent time with her for several years while J.C. and her mother were living in the home of Ms. Rivera's mother in Queens.

33. Infant plaintiffs E.S. and B.C. entered foster care in December 1999 because their mother, who was also plaintiffs' niece, neglected them. Upon entering foster care, E.S. and B.C. were immediately placed in plaintiffs' home, where their two elder half sisters (who are not parties to this action) and their first cousin, J.C., had been living as plaintiffs' kinship foster children for a year.

34. Prior to E.S. and B.C.'s placement in their home, adult plaintiffs regularly visited with the girls and their mother for more than a year and thus already knew the girls very well when E.S. and B.C. came to live with plaintiffs.

35. While they were in plaintiffs' care, E.S., B.C., and J.C. lived with adult plaintiffs and the two older girls in plaintiffs' spacious three-story, two-family home in Cambria Heights, Queens. Adult plaintiffs and the girls occupied the bottom two floors, while plaintiffs' adult daughter lived with her fifteen and eight year-old sons in a separate apartment on the top floor of the house.

36. During the time that infant plaintiffs resided with plaintiffs, plaintiffs provided the girls with a safe and loving home. Plaintiffs always made sure that the girls were clean, well-fed, and well-dressed, and that their school attendance was always outstanding.

37. E.S., B.C., and J.C. in turn developed strong ties of love and affection with plaintiffs.

38. Defendants Njoku and Garcia made regular visits to plaintiffs' home while infant plaintiffs lived there, and saw that adult plaintiffs provided loving, safe care for infant plaintiffs, and never abused, neglected, or mistreated infant plaintiffs.

39. While infant plaintiffs were in their care, adult plaintiffs always cooperated with defendants to ensure that infant plaintiffs visited regularly with their mothers.

40. J.C.'s mother was so happy with the care that plaintiffs were providing to J.C. that she told defendants she would voluntarily surrender her parental rights on the condition that plaintiffs adopt J.C.

41. Plaintiffs also informed City and Agency defendants that they were willing to adopt J.C.

42. On the morning of March 31, 2006, one of E.S. and B.C.'s older half-sisters stated that the boyfriend of plaintiffs' adult daughter had sexually assaulted the other older half-sister, while the two half-sisters were in the upstairs apartment. Upon information and belief, said allegation was completely false.

43. At the time of the alleged incident, plaintiff Anthony Rivera was caring for all three infant plaintiffs in the backyard of plaintiffs' home.

44. The allegations were transmitted to defendants Garcia and Cummings, who, at the direction of defendant Bukenya, immediately went to plaintiffs' home.

45. Defendants Garcia and Cummings interviewed all three infant plaintiffs and the two older half-sisters. Upon information and belief, the children contradicted each other.

46. Despite the inconsistencies, defendants Cummings and Garcia decided to remove the three infant plaintiffs from plaintiffs' care, along with the two older half-sisters.

47. Defendants transported the five girls to a hospital, where all of them were medically examined and interviewed by a hospital social worker, police officers, and caseworkers from ACS's Office of Confidential Investigations (OCI).

48. Upon information and belief, the hospital staff, police officers, and OCI caseworkers all determined that none of the girls had been sexually assaulted.

49. Nevertheless, defendants Garcia and Cummings, at the direction of

defendant Bukenya, still removed infant plaintiffs from plaintiffs' care on the night of March 31, 2006.

50. Upon information and belief, defendants Warren, Williams, and Cortez ratified the decision to remove and detain the infant plaintiffs.

51. When they removed infant plaintiffs from plaintiffs, defendants Garcia and Cummings did not provide plaintiffs with notice of removal stating the reasons for the removal, nor inform plaintiffs of their right to contest the removal.

52. After they were removed from plaintiffs' home, infant plaintiffs were placed in a foster home of a stranger in the Bronx.

53. Five days after the removal of the infant plaintiffs, plaintiff Mable Rivera learned from an unrelated third party that she had a right to contest the removal.

54. Adult plaintiffs immediately contacted ACS to seek review of the removal and detention of the infant plaintiffs, and ACS scheduled a conference.

55. The conference at ACS, which ACS referred to as an "Independent Review," was held at ACS's offices in Manhattan on April 18, 2006. Defendant Shah presided at the meeting, which defendants Garcia, Njoku, Warren, and Thomas, as well as several other ACS and Agency staff, attended. Both adult plaintiffs attended.

56. At said meeting, defendant Shah did not permit plaintiffs to question any ACS or Agency employees, including defendants Garcia, Njoku Warren, and Thomas.

57. At the meeting, an OCI investigator stated that none of the five girls had been physically touched by the alleged perpetrator of the sexual assault, and that the hospital's doctor and social worker concluded that no sexual assault had occurred.

58. Nevertheless, on May 8, 2006, defendant Shah issued a written "Decision

after Independent Review,” upholding the decision to remove infant plaintiffs from plaintiffs.

59. Shortly thereafter, plaintiffs requested an administrative hearing with defendant Johnson’s Office of Children and Family Services (“OCFS”), which is the sole remedy that New York law provides for kinship foster parents who wish to challenge the removal of foster children from their homes. *See* N.Y. Social Services Law § 400.

60. Upon information and belief, even if plaintiffs were victorious on the merits at their OCFS administrative hearing, defendant Johnson and his designees would not order the return of infant plaintiffs to plaintiffs’ care.

61. The hearing, scheduled for June 12, 2006, was adjourned at plaintiffs’ request to permit OCI to complete the investigation of the sexual assault allegations.

62. On July 14, 2006, OCI completed the investigation and determined the allegations to be unfounded.

63. Nevertheless, defendants refused to return infant plaintiffs to plaintiffs.

64. On August 23, 2006, Agency employees performed a safety assessment of plaintiffs’ home and determined that there were no safety risks to children.

65. Agency defendants then told plaintiffs that Agency defendants would return infant plaintiffs to plaintiffs’ care on August 25, 2006.

66. On August 25, 2006, plaintiffs went to defendant Agency’s offices in the Bronx to pick up infant plaintiffs, all of whom were waiting there with their suitcases. When plaintiffs arrived, defendant Cummings refused to reunite infant plaintiffs with plaintiffs.

67. Infant plaintiffs cried uncontrollably when they learned that they could not go home with adult plaintiffs.

68. On August 30, 2006, plaintiffs appeared for their OCFS administrative

hearing. No one appeared on behalf of defendant Agency or defendant City.

69. Plaintiffs provided defendant Johnson's Administrative Law Judge with a letter from Agency defendants stating that Agency defendants intended to reunite plaintiffs with infant plaintiffs and informed the ALJ that City defendants had told plaintiffs' counsel that they did not intend to participate in the administrative hearing.

70. Defendant Johnson's Administrative Law Judge refused to proceed with the hearing in the absence of defendant Agency and defendant City.

71. Defendant Johnson's Administrative Law Judge rescheduled the hearing without providing any relief to plaintiffs and refused to order defendant City to appear at the adjourned hearing.

72. On December 11, 2006, the United States District Court for the Southern District of New York ordered defendant City to return J.C. to adult plaintiffs' care immediately. J.C. was returned to plaintiffs' care on December 12, 2006.

73. On December 20, 2006, the United States District Court for the Southern District of New York ordered defendant City to return E.S. and B.C. to plaintiffs' care immediately. E.S. and B.C. were returned to adult plaintiffs' care on December 21, 2006.

74. During the more than eight months that adult plaintiffs and infant plaintiffs were unlawfully separated from one another, adult plaintiffs and infant plaintiffs were only permitted to visit each other three times.

75. Within ninety days after the claim upon arose, plaintiffs caused a notice of claim in writing, sworn to by adult plaintiffs, to be served upon defendant City of New York.

V. FIRST CAUSE OF ACTION

76. Plaintiffs reallege and incorporate by reference paragraphs 1 through 78.

77. Upon information and belief, defendants Agency, City and Mattingly have a policy of removing and detaining children from their blood relatives in the first, second, or third degree without probable cause, without investigation, and without due process of law, when the relatives are licensed as foster parents. Said policy, and the removal and detention effectuated pursuant to said policy and regulations, constituted an unlawful interference with plaintiffs' liberty interest in the care and custody of their grand nieces, the infant plaintiffs herein, in violation of the Fourteenth Amendment to the United States Constitution, and the Second Circuit's decision in Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982). Said policy, and its implementation, constitute gross deviations from acceptable professional conduct.

78. Upon information and belief, defendant Johnson has promulgated regulations regarding the removal of children from foster homes, specifically regulations governing the so-called "Independent Review" of a removal decision, which do not require that local governments provide relatives who serve as foster parents with due process of law prior to or subsequent to the removal of children from said relatives. *See* 18 N.Y.C.R.R. §443.5.

79. Said regulations, and the removal and detention effectuated pursuant to said policy and regulations, constituted an unlawful interference with plaintiffs' liberty interest in the care and custody of their grand nieces, the infant plaintiffs herein, in violation of the Fourteenth Amendment to the United States Constitution, and the Second Circuit's decision in Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982). Said regulations, and their implementation, constitute gross deviations from acceptable professional conduct and deliberate indifference on the part of defendants Johnson, Agency, City, and Mattingly to the strong likelihood that these regulations would cause the removal of children from their relatives without due process of law, in violation of the Fourteenth Amendment.

80. Upon information and belief, acting pursuant to said policy and regulations, defendants Bukenya, Garcia, Njoku, Cummings, Warren, Thomas, Williams, Cortez, and Shah recommended, removed, detained, and/or ratified the removal and detention of infant plaintiffs from plaintiffs without probable cause and without due process of law, in that they executed and ratified the removal and detention:

- a. without probable cause to believe that continuing in the care of plaintiffs presented an imminent danger to E.S., B.C., and J.C.'s life or health;
- b. without probable cause to believe that plaintiffs were unfit to care for E.S., B.C., and J.C.;
- c. without providing plaintiffs constitutionally adequate prior notice;
- d. without providing plaintiffs a pre-deprivation hearing; and
- e. by providing plaintiffs a constitutionally inadequate post-deprivation remedy in the form of an "Independent Review."

81. Upon information and belief, acting pursuant to said policy and regulations, defendants Bukenya, Garcia, Njoku, Cummings, Warren, Thomas, Williams, Cortez, and Shah recommended, removed, detained, and/or ratified the removal and detention of infant plaintiffs from plaintiffs without probable cause and without due process of law, in that they have perpetuated the detention of infant plaintiffs arbitrarily and capriciously and without articulating any basis for doing so.

82. Upon information and belief, acting pursuant to said policy, all defendants, except defendant Johnson, have detained E.S., B.C., and J.C. in government custody, in the home of a stranger, for over five months thus far. Upon information and belief, said detention has occurred pursuant to the regulations promulgated by defendant Johnson.

83. In the alternative, defendants Agency, City, and Mattingly failed to adopt policies requiring their employees to remove children only if they had probable cause to believe that continuing in the care of their relatives presents an imminent danger to the children's life or health, only if they provided due process of law to children and relatives, and only if they had investigated to determine said factors. Defendants Agency, City and Mattingly knew or should have known that said failure would cause those defendants' agents to remove and detain children without probable cause to believe that continuing in the care of their relative presents an imminent danger to the children's life or health and without due process of law, in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

84. Defendants Agency, City and Mattingly knew or should have known that their failure to adopt a policy regarding the removal of children from a non-offending relative would cause defendants' agents and employees to violate the relatives' rights to live together as a family without state intervention, contrary to the Fourteenth Amendment to the Constitution.

85. Defendants Agency, City and Mattingly have provided grossly inadequate and unprofessional training and supervision to their employees regarding the removal and detention of children from relatives who are licensed as foster parents, the making of probable cause determinations, and the provision of due process of law to such relatives.

86. Defendants Agency, City and Mattingly knew or should have known that their employees were improperly trained and supervised in those areas.

87. As a result of the defendants' actions, plaintiffs suffered the loss of the love and services of their grand nieces, infant plaintiffs suffered the loss of the love and care of their great aunt and great uncle, plaintiffs incurred legal and other expenses, and plaintiffs and infant plaintiffs suffered extreme pain and suffering, terror, mental anguish, and depression.

VI. SECOND CAUSE OF ACTION

88. Plaintiffs reallege and incorporate by reference paragraphs 1 through 90.

89. Upon information and belief, defendants Agency, City and Mattingly have a policy and practice of removing and detaining children from their relatives without probable cause and without due process of law, and for purposes other than returning the children to their parents, even though the relatives have not abused or neglected their children, when the relatives are licensed as foster parents for the children.

90. Acting pursuant to said policy, and without probable cause or due process of law, defendants Bukenya, Garcia, Njoku, Cummings, Warren, Thomas, Williams, Cortez, and Shah, recommended, removed, detained, and ratified the removal and detention of E.S., B.C., and J.C. from plaintiffs.

91. Said policy, and the removal and detention pursuant to said policy, constitutes an unlawful interference with plaintiffs' liberty interest in the care and custody of their grand nieces, and their right to associate with their grand nieces, in violation of the First and Fourteenth Amendments to the United States Constitution. Said policy, and its implementation, are gross deviations from acceptable professional conduct.

92. Defendants Agency, City and Mattingly knew or should have known that their failure to adopt a policy requiring their employees to remove children only if probable cause existed would cause their agents and employees to remove and detain children without probable cause, in violation of the Fourth and Fourteenth Amendments to the Constitution.

93. Defendants Agency, City and Mattingly knew or should have known that their failure to adopt a policy requiring their employees to afford relatives who are foster parents due process of law in connection with the removal of their children would cause their agents and

employees to remove and detain children without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

94. As a result of the defendants' actions, plaintiffs suffered the loss of the love and services of their grand nieces, infant plaintiffs suffered the loss of the love and care of their great aunt and great uncle, plaintiffs incurred legal and other expenses, and plaintiffs and infant plaintiffs suffered extreme pain and suffering, terror, mental anguish, and depression.

VII. THIRD CAUSE OF ACTION

95. Plaintiffs reallege and incorporate by reference paragraphs 1 through 97.

96. Upon information and belief, defendant Johnson has devised and currently oversees implementation of administrative fair hearing procedures for adjudicating kinship foster parents' appeals to OCFS of decisions to remove foster children from the homes of said kinship foster parents for reasons other than reunifying the children with their parents. *See* 18 N.Y.C.R.R. CC 358-5.6, 358-5.9, 403.6.

97. Upon information and belief, in implementing said procedures, defendant Johnson has a policy or practice to unnecessarily delay commencing, completing, and deciding administrative hearings on kinship foster parents' appeals of the removals of foster children.

98. Acting pursuant to said practice, defendant Johnson and his designees have needlessly adjourned the scheduling and completion of plaintiffs' administrative hearing concerning the removal of their grand nieces, purportedly to provide defendant City with the opportunity to appear even though the City has waived its appearance.

99. Defendant Johnson's practice, and his and his designees' delayed adjudication of plaintiffs' appeal pursuant to said practice, has deprived plaintiffs of due process

of law subsequent to the removal infant plaintiffs from plaintiffs' care and therefore constituted an unlawful interference with plaintiffs' liberty interest in the care and custody of their grand nieces, and their right of intimate association, in violation of the First and Fourteenth Amendment to the United States Constitution.

100. As a result of the defendants' actions, plaintiffs suffered the loss of the love and services of their grand nieces, infant plaintiffs suffered the loss of the love and care of their great aunt and great uncle, plaintiffs incurred legal and other expenses, and plaintiffs and infant plaintiffs suffered extreme pain and suffering, terror, mental anguish, and depression.

VIII. FOURTH CAUSE OF ACTION

101. Plaintiff reallege and incorporate by reference paragraphs 1 through 103.

102. Upon information and belief, in issuing administrative hearing decisions, it is defendant Johnson and his designees' practice not to require the return of foster children to their relatives' care upon finding that the children's removals were improper.

103. The administrative hearing procedures established by defendant Johnson for kinship foster parents thus do not provide said kinship foster parents with a meaningful post-deprivation remedy and thus deprive said kinship foster parents of due process of law.

104. Said administrative fair hearing procedures, and the application of said procedures to plaintiffs, constitute an unlawful interference with plaintiffs' liberty interest in the care and custody of their grand nieces, the infant plaintiffs herein, in violation of the Fourteenth Amendment to the United States Constitution and the Second Circuit's decision in Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982).

105. Upon information and belief, defendant Johnson, despite his awareness of the Second Circuit's decision in Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982), has never

instructed his employees and designees to comply with said decision.

106. Instead, upon information and belief, defendant Johnson has a policy or practice of ignoring the law of this Circuit, as enunciated in said decision.

107. As a result of the defendants' actions, plaintiffs suffered the loss of the love and services of their grand nieces, infant plaintiffs suffered the loss of the love and care of their great aunt and great uncle, plaintiffs incurred legal and other expenses, and plaintiffs and infant plaintiffs suffered extreme pain and suffering, terror, mental anguish, and depression.

IX. FIFTH CAUSE OF ACTION

108. Plaintiff realleges and incorporates by reference paragraphs 1 through 110.

109. Upon information and belief, defendant Johnson has authorized the application of New York State Department of Social Services regulations regarding administrative fair hearings to kinship foster parents' appeals to OCFS of decisions to remove foster children from the homes of said kinship foster parents for reasons other than reunifying the children with their parents. *See* 18 N.Y.C.R.R. §§ 358-5.6, 358-5.9, 403.6. The application of these regulations to kinship foster parents' administrative hearings deprives said kinship foster parents of due process of law in that:

a. the foster care agency and local government child welfare department need only support the propriety of a removal with substantial evidence, rather than by clear and convincing or a preponderance of the evidence, *see* 18 N.Y.C.R.R. § 358-5.9; and

b. the final decision maker is not the trier of fact and thus makes credibility determinations on witnesses that he or she did not actually see testify, *see* 18 N.Y.C.R.R. § 358-5.6; and

c. the Commissioner of OCFS, an interested party, or his designee makes the final decision instead of a neutral arbiter, *see* 18 N.Y.C.R.R. § 358-5.6; and

d. kinship foster parents do not have the right to confront all the witnesses against them. *See* 18 N.Y.C.R.R. § 358-5.9; and

e. kinship foster parents have no right to counsel at said hearing; and

f. the decision-maker is not a judge; and

g. kinship foster parents are not entitled to notice of the charges against them; and

h. the standard for separating children from kinship foster parents is not unfitness, as required by the Fourteenth Amendment of the United States Constitution; and

i. the standard for separating children from kinship foster parents is not child neglect or abuse, as required by Article 10 of the New York Family Court Act; and

j. kinship foster parents do not have the right to secure the return of their foster children at said hearings, even if they prevail on the merits of their claims.

110. Said hearing procedures, and the adjudication pursuant to said procedures, deprive plaintiffs of substantive and procedural due process of law, in violation of the Fourteenth Amendment of the United States Constitution and the Second Circuit's decision in Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982).

111. As a result of the defendants' actions, plaintiffs have and will continue to suffer the loss of the love and services of their grand nieces, and incurred legal and other expenses; the infant plaintiffs suffered the loss of liberty and of the care and guidance of their great aunt and great uncle, the possible loss of education, inadequate medical and therapeutic

treatment; and the plaintiffs and infant plaintiffs all suffered extreme humiliation, pain and suffering, terror, mental anguish, and depression

X. SIXTH CAUSE OF ACTION

112. Plaintiffs reallege and incorporate by reference paragraphs 1 through 114.

113. In removing infant plaintiffs from plaintiffs and detaining infant plaintiffs with strangers, defendants City, Mattingly, Agency, Shah, Warren, Thomas, Williams, Cortez, Bukenya, Garcia, Njoku, and Cummings violated infant plaintiffs' right to be free of unlawful searches and seizures, protected by the Fourth Amendment of the United States Constitution.

114. In failing to order City defendants to return infant plaintiffs to plaintiffs' care, defendant Johnson violated infant plaintiffs' right be free of unlawful searches and seizures, protected by the Fourth Amendment of the United States Constitution.

115. As a result of the defendants' actions, plaintiffs suffered the loss of the love and services of their grand nieces, infant plaintiffs suffered the loss of the love and care of their great aunt and great uncle, plaintiffs incurred legal and other expenses, and plaintiffs and infant plaintiffs suffered extreme pain and suffering, terror, mental anguish, and depression

XI. SEVENTH CAUSE OF ACTION

116. Plaintiffs reallege and incorporate by reference paragraphs 1 through 118.

117. By removing and detaining infant plaintiffs from plaintiffs, all defendants other than defendant Johnson unlawfully interfered with plaintiffs' custody of their grand nieces.

118. By restricting visitation between plaintiffs and infant plaintiffs, all defendants other than defendant Johnson unlawfully interfered with plaintiffs' custody of their grand nieces.

119. As a result of the defendants' actions, plaintiffs suffered the loss of the

love and services of their grand nieces, infant plaintiffs suffered the loss of the love and care of their great aunt and great uncle, plaintiffs incurred legal and other expenses, and plaintiffs and infant plaintiffs suffered extreme pain and suffering, terror, mental anguish, and depression.

XII. EIGHTH CAUSE OF ACTION

120. Plaintiffs reallege and incorporates by reference paragraphs 1 through 122.

121. All of the defendants had a duty to act with reasonable care toward plaintiffs and with the highest degree of care toward infant plaintiffs.

122. In removing and detaining infant plaintiffs, needlessly delaying adjudication of plaintiffs' appeal of the removal, and in failing to order the immediate return of infant plaintiffs, all defendants breached said duties and grossly deviated from accepted professional standards.

123. As a result of the defendants' actions, plaintiffs suffered the loss of the love and services of their grand nieces, infant plaintiffs suffered the loss of the love and care of their great aunt and great uncle, plaintiffs incurred legal and other expenses, and plaintiffs and infant plaintiffs suffered extreme pain and suffering, terror, mental anguish, and depression.

WHEREFORE plaintiffs respectfully request that judgment be entered:

1. Declaring unconstitutional defendants' removal of infant plaintiffs from plaintiffs' care, to the extent that it was executed without probable cause, for reasons other than plaintiffs' maltreatment or abuse of E.S., B.C., and J.C. or the reunification of E.S., B.C., and J.C. with their parents, and without due process of law in the form of constitutionally adequate notice and a constitutionally adequate pre-deprivation or post-deprivation hearing; and

2. Declaring unconstitutional 18 N.Y.C.R.R. §443.5, to the extent that it permits the removal of children from kinship foster parents without providing due process of law in the

form of a constitutionally adequate pre-deprivation or post-deprivation hearing, when the removals are for purposes other than reunifying the children with their parents; and

3. Declaring unconstitutional defendant Johnson's administrative hearing procedures for reviewing removals of children from their kinship foster parents, to the extent that these procedures permit the removal of children from kinship foster parents without providing due process of law in the form of a timely and meaningful post-deprivation remedy, when the removals are for purposes other than reunifying the children with their parents; and

4. Awarding plaintiffs and infant plaintiffs reasonable compensatory and punitive damages in a sum to be determined by the jury; and

5. Awarding plaintiffs and infant plaintiffs interest from March 31, 2006; and

6. Awarding plaintiffs and the infant plaintiffs reasonable attorney fees pursuant to 42 U.S.C. §1988; and

7. Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
January 15, 2008



DARIUS CHARNEY (DC1619)
Lansner & Kubitschek
Attorneys for Plaintiffs
325 Broadway, Suite 201
New York, New York 10007
(212) 349-0900
dcharney@lanskub.com